REMARKS

Claims 1-17 are pending in this application. Claims 16 and 17 were allowed. Claims 4-9, 13, and 14 were objected to. Claims 1-3 and 10-12 were rejected.

Allowed Claims

Claims 16 and 17 were allowed. Applicants thank the Examiner for the allowed claims.

Claim Objected To

Claims 4-9, 13, and 14 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant has amended claims 4-9, 13, and 14 in independent form including all of the limitations of the base claim and intervening claims and respectfully requests allowance of these claims.

Double Patenting Rejection

Claims 1-17 were rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-16 of U.S. Patent 6,317,435 in view of U.S. Patent 6,707,806 to Kato (hereinafter "Kato").

Applicant has provided a terminal disclaimer to overcome U. S. Patent 6,317,435.

Kato teaches or suggests a wireless transmitter with power control based on data type. (Title) A wireless transmitter transmits data with at least two different levels of required quality on the same wireless channel. The transmitter has a multiplexer that multiplexes the data into frames, each frame containing data with at least two different levels of required quality, and a power controller that controls the transmitting power of each type of data separately within each frame, thereby avoiding the use of excess transmitting power. (Abstract)

Applicant submits that the double patenting rejection based on U. S. Patent 6,707,806 in view of Kato as being obvious to combine has not been made obvious because the cited reference does not disclose all the limitations of amended claim 1 and a terminal disclaimer has been provided. Specifically, Kato does not teach, suggest, or disclose "(C) determining by the base station or the mobile station(s) that a

frame was received with errors; and (D) retransmitting the frame received with errors." Despite diligent study of the Kato reference, Applicants are unable to find any teaching or suggestion to "(C) determining by the base station or the mobile station(s) that a frame was received with errors; and (D) retransmitting the frame received with errors."

Kato teaches away from the limitation of amended claim 1 because each type of data found in the transmitted frame is transmitted at the power necessary to obtain the required quality. Since the frame is transmitted with sufficient power there is no need for retransmissions in the teachings of Kato.

Amended claim 2 is allowable for the same reasons given above for claim 1.

Claims 3, 10-12, and 15 are allowable as depending directly or indirectly from an allowable base claim.

Claims Rejections under 35 U.S.C. § 103(a)

Claims 1-3, 10-12, and 15 were rejected as being unpatentable over U.S. Patent 5,463,626 to Hoff (hereinafter "Hoff") in view of U.S. Patent 6,707,806 to Kato (hereinafter "Kato"). This rejection is respectfully traversed.

To establish a prima facie case of obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. "The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in Applicants' disclosure." In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Applicants respectfully submit that a prima facie case of obviousness has not been established regarding claims 1-3, 10-12, and 15 because the prior art cited does not teach or suggest all the claim limitations.

With respect to amended claim 1, Applicants respectfully submit that Hoff does teach or suggest all the limitations of claim 1. In particular, Hoff does not teach or suggest the following element of claim 1: disclose "(C) determining by the base station or the mobile station(s) that a frame was received with errors; and (D) retransmitting the frame received with errors."

Hoff discloses a wireless facsimile computer slate. (Title) A radio paging network transmits non-paging data, such as facsimile images to lap top computer receivers by formatting the data into a series of packets and interleaving these packets on a space available basis, into the paging signal. (Abstract) A message transmitting

clearinghouse maintains two message queues. One queue is for short paging messages and the other queue is for relatively long screen or facsimile data messages. (Col. 1, lines 60-63) At the beginning of each time period, the short message queue is interrogated and if short messages are waiting, these are formatted for transmission. (Col. 1, lines 63-66). Time slots not filled with paging messages are then made available to carry screen or facsimile data messages. (Col. 1, line 66-Col. 2, line 1) When the interleaving is taking place, messages are formatted and assigned to particular subframes and time slots, as determined by the identifier codes of the intended recipients. After messages from the first queue have been assigned to their respective time slots, the remaining time slots are flagged as free and made available to transmit data from the second queue. The clearinghouse then polls the second queue and splits any screen data therein into portions sized for formatting into packets. These data portions are then formatted and interleaved into vacant time slots in the protocol. (Col. 3, lines 29-35)

Hoff does not disclose all the limitations of amended claim 1 because Hoff does not disclose "(C) determining by the base station or the mobile station(s) that a frame was received with errors; and (D) retransmitting the frame received with errors." Hoff does not provide for retransmission and in addition, explicitly transmits the two data types sequentially. In addition, Hoff makes no mention of power usage during the sequential transmission. Given that Hoff transmits the two data types sequentially, Hoff cannot utilize the full transmission power capacity during a time frame, nor does Hoff provide for retransmission of frames with errors.

The discussion of Kato, above, is maintained. Neither Hoff nor Kato teaches or suggests the limitation "(C) determining by the base station or the mobile station(s) that a frame was received with errors; and (D) retransmitting the frame received with errors."

In addition, Applicants submit that the combined the references teach away from Applicants' invention. Kato teaches that the frame is transmitted at full power, which provides a level of quality required by the type of data being transmitted. Combining Hoff and Kato results in a system that sequentially sends data from two queues at full power, thereby providing a specified quality of service, there is no need to retransmit frames received in error. Therefore, Applicant respectfully requests that the rejection of amended claim 1 be withdrawn.

Claim 2 is allowable for the same reasons given above for claim 1.

Claims 3, 10-12, and 15 are allowable as depending directly from an allowable base claim.

REQUEST FOR ALLOWANCE

In view of the foregoing, Applicants respectfully submit that all pending claims in the present invention are in a condition for allowance, which is earnestly solicited. Should any issues remain unresolved, the Examiner is encouraged to telephone the undersigned at the number provided below.

Respectfully submitted,

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